

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

GERALD R. MILLER, TRUSTEE)	
)	
Plaintiff,)	
)	
v.)	No. CIV-09-96-FHS
)	Bankr. No. 08-80228-M
GORDON PIERCE and GRANT ATKINS,)	Adv. No. 08-08039-M
)	
Defendants.)	

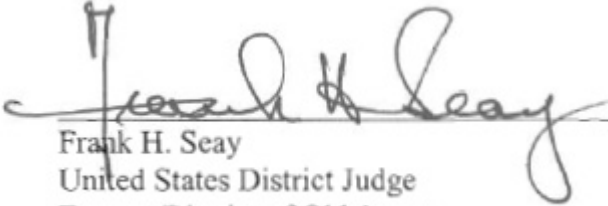
OPINION AND ORDER

Before the Court for its consideration is the Motion to Withdraw Reference (Doc. No. 3) filed by Defendant, Gordon Pierce ("Pierce"). Pierce requests this Court withdraw the reference of the underlying adversary proceeding from the United States Bankruptcy Court for the Eastern District of Oklahoma pursuant to 28 U.S.C. 157(d), Fed.R.Bankr.P. 5011, and Local Rule 84.1(b). Pierce contends the withdrawal of the reference is appropriate because (1) the claims asserted by the Plaintiff, Gerald R. Miller, Bankruptcy Trustee ("Trustee"), constitute non-core proceedings, (2) he has made a demand for a jury trial, and is entitled to a jury trial, in connection with such claims, (3) all parties have not consented to the bankruptcy judge conducting a jury trial, and (4) the interests of judicial efficiency weigh in favor the withdrawal. In response, the Trustee agrees the withdrawal of the reference is appropriate, but he asks that the Bankruptcy Court be allowed to retain jurisdiction of the case until it is "trial ready" so as to allow the Bankruptcy Court to supervise discovery, conduct pre-trial hearings, and rule on motions. The Court concludes Pierce's Motion to Withdraw Reference should be granted as to Counts II-V of the Trustee's complaint.

On March 9, 2009, the Bankruptcy Court issued an order pursuant to 28 U.S.C. § 157(b)(3) regarding its jurisdiction. See Local Rule 84.1(b)(4) ("Within a time period reasonable under the circumstances of the matter, the bankruptcy judge shall enter an order pursuant to 28 U.S.C. § 157(b)(3) determining whether the proceeding is a core proceeding or a proceeding that is otherwise related to a case under Title 11 and forward the order to the district court together with a copy of the record of the proceeding for which withdrawal is sought."). The Bankruptcy Court determined that Counts II-V of the Trustee's complaint for (II) breach of fiduciary duty to the debtor corporations, (III) aiding and abetting a breach of fiduciary duty, (IV) civil conspiracy, and (V) unjust enrichment, are related non-core proceedings. The Bankruptcy Court also determined that to the extent the Trustee is found to have standing to bring Count I of the complaint for breach of fiduciary duty to creditors pursuant to 11 U.S.C. § 544, such a claim is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The Court agrees with and adopts the findings and conclusions of the Bankruptcy Court in its March 9, 2009, Order. The Court finds the withdrawal of the reference as to Counts II-V to be appropriate for cause shown under 28 U.S.C. § 157(d). Cause for the withdrawal of the reference has been established due to Counts II-V being related non-core proceedings, Pierce's request for a jury trial, and the absence of any consent by all the parties for the Bankruptcy Court to conduct such jury trial. 28 U.S.C. § 157(e). The Court has considered, but rejects, the Trustee's suggestion that the withdrawal of these claims should be deferred until the case is "trial ready." Consequently, the Court orders the reference withdrawn as to Counts II-V of the Trustee's complaint. Count I of the Trustee's complaint remains with the Bankruptcy Court.

Pierce's Motion to Withdraw Reference (Doc. No. 3) is therefore granted as to Counts II-V of the Trustee's complaint and denied as to Count I of the Trustee's complaint. This action involving Counts II-V of the Trustee's complaint will be set on the Court's next status and scheduling conference docket. Notice of such setting will be provided to counsel for the parties.

It is so ordered this 31st day of March, 2009.



Frank H. Seay
United States District Judge
Eastern District of Oklahoma